

Title VI Guidance Comments
U.S. Environmental Protection Agency
Office of Civil Rights (1201A)
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Washington, DC, 20460
Via email: civilrights@epa.gov

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The Sierra submits the following comments on the Title VI Draft Recipient Guidance and Draft Revised Investigation Guidance. The Sierra Club is a national environmental organization with more than 600,000 members nationwide. We appreciate this opportunity to provide feedback regarding your proposed policy.

The Sierra Club joins in the growing chorus of voices that finds the draft guidance documents to be flawed to the very core, and as such, an extraordinary disappointment. With the weak and ineffectual guidance, the EPA is squandering an opportunity to give direction and meaning to Title VI enforcement. A generous reading of the draft shows the agency confirming that Title VI remedies for impacted communities shall remain, at most, theoretical in nature. More critically, the drafts fail to achieve their intended goals: to find a way for the EPA to enforce civil rights laws and to comply with the President's Executive Order 12898.

In our view, the guidance gives every benefit of the doubt to the recipient, and offers sparse means of recourse to the complainant. Indeed, the guidance practically guarantees that no Title VI claim will ever be successful. The processes described by the drafts remain laborious and burdensome for the complainant, the guidance provides irrationally wide latitude for complaints to be dismissed, and the guidance has no real mechanism for EPA enforcement power over recipients.

We share many of the concerns of others commenting, including Title VI complainants, NEJAC, and numerous voices from the environmental justice community. In particular:

- We share the concerns that so-called “area-specific agreements” and the “due weight” they would be afforded seem to be, in actuality, merely unenforceable constructions devised by the agency primarily to facilitate the dismissal of claims.
- We share the dismay that a claim might be dismissed if, under a contested permit, reductions of emissions occur, even though the emissions could continue to compound the disparate impacts in a community.
- We share the frustration with EPA’s view that a permit denial is practically impossible under the guidelines, because rarely will a single permit be the “solely” responsible for adverse impacts, regardless of how substantial the permit’s contribution might be.
- We share the concern that EPA’s views as to the scope of a Title VI investigation are so narrow as to avoid taking into account the social, cultural, and economic harms that a project might have on an impacted community.
- We share in the frustration that under the guidelines, a complainant in the “non-adversarial” proceeding has no right to appeal a finding but a recipient does.

- We share in the skepticism that EPA will ever perform independent compliance reviews given current and anticipated resources for the Office of Civil Rights.
- We share in the frustration that a complaint does not ripen until a permit is issued, yet the investigation time lag and backlog guarantee that even in the most flagrant of violations, communities may suffer for years before relief can be granted.
- We share the concerns regarding the 180-day clock measuring timelines of a complaint and how the inflexibility works to frustrate complainants. In no case should the clock start ticking until the affected parties become aware of the violation. To start the clock at the time of violation encourages both state permitting agencies and those seeking permits to cloak the permitting process from public scrutiny in order to avoid detection for the 180 day period.
- We share the concerns regarding alternative dispute resolution (ADR), and how ADR procedures might not be as well suited for complainants as for recipients.
- We share the concerns that EPA fails to use other measures of localized environmental harm such as recognized toxic hotspots, chemical accidents and upsets, and data on facility compliance.
- We share in the frustration that the recipient guidance does little to require genuinely meaningful public participation given the institutional and functional barriers in most participation processes and the fundamental and persistent limitations on a typical impacted community's ability to participate with adequate technical and legal expertise.
- We are concerned that the Office of Civil Rights' (OCR) methodology for quantifying disparity supports disparate impact. Basing the quantification of disparate impact upon the size of the affected population, for example, would result in apparently smaller impacts for smaller populations. Thus, in the agency's computation of "impact", minority populations would have to face many times the risk to make up for their smaller numbers. Thus, this methodology constitutes procedural discrimination against minority populations. We recommend that it be completely reviewed and revised to uncover and remedy any other discriminatory elements of the methodology.

In sum, the two drafts for Title VI guidance signal an undeniable setback for citizens and communities battling environmental injustice. The Sierra Club urges a complete re-working of the guidance that will respect the important principles underlying Title VI, and that will provide for efficient and effective enforcement of civil rights law at EPA.

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